

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5328 of 1987

with

SPECIAL CIVIL APPLICATION NO. 5586 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PURSHOTTAMBHAI R KACHHADIA & PATEL PRAFULBHAI
PUNABHAI and 5 others.

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioners
MR V.M. PANCHOLI, ASSTT. GOVT. PLEADER for Resp. State
NOTICE SERVED for Respondent No. 2
MR PM RAVAL for Respondent No. 3, 4 - ABSENT

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 05/11/1999

ORAL JUDGEMENT

Both these petitions raise common questions and

have been argued together.

2. The petitioner in Special Civil Application No. 5328 of 1987 challenges the order dated 28th Sept. 1987 at Annexure "C" to the petition, passed by the Deputy Executive Engineer, Building and Communications, Sub-Division No.II, Junagadh District Panchayat, terminating his services with effect from 31st October, 1987. A declaration is sought that the artificial breaks in the petitioner's service were illegal and unconstitutional. A direction is also sought to absorb the petitioner permanently in service.

3. The petitioners of Special Civil Application No. 5586 of 1987, have sought identical reliefs challenging the orders dated 28/29th Sept. 1987 of the Deputy Executive Engineer, terminating their services from 31st October, 1987.

4. The petitioner of Special Civil Application No. 5328/87 was from time to time appointed for a fixed period of 29 days with a clear stipulation that on the expiry of 29 days, he will automatically stand relieved. Under different orders, he was appointed for a specific period for different works as work-charge employee. Admittedly, the petitioners in Special Civil Application No. 5586/87 were also given such periodic appointments, which they are describing as artificial breaks, in their petition. According to the petitioners, there has been enough work on the establishment to continue all the petitioners and there was no justification for terminating their services.

5. At the hearing of these petitions, the only contention that was raised by the learned Counsel appearing for the petitioners in both the matters is that the termination of the services of the petitioners being in violation of Section 25F of the Industrial Disputes Act, 1947, deserves to be struck down. It was argued that under the order terminating their services while giving one month's notice, the petitioners were not ordered to be paid the compensation on the date on which their services would terminate, namely - 30th October, 1987. It is stated that as per the termination order, though the services of these petitioners were to stand terminated from 30th October, 1987 and 31st October, 1987 in the respective petition, they were required to collect the benefits under Section 25F of the Act on 7.11.1987. The learned Counsel heavily relied upon the decision of the Hon'ble Supreme Court in Workmen of Subomg Tea Estate, represented by the Indian Tea Employees Union Vs.

Outgoing Management of Subong Tea Estate, and anr., reported in AIR 1967 Supreme Court 420, more particularly on paragraph 17 of the judgement, wherein, referring to Section 25F of the Industrial Disputes Act, the Hon'ble Supreme Court held that Section 25F of the Act prescribes the conditions precedent to a valid retrenchment of industrial employees and that the three conditions prescribed by Clauses (a), (b) and (c) of Section 25F constitute conditions precedent before an industrial workman can be validly retrenched. It was therefore contended that when the amount of compensation was required to be collected after the date on which the petitioners were to be released by the notice issued to them, there was no compliance with clause (b) of Section 25F of the Act, which requires compensation to be paid at the time of retrenchment.

6. The learned Counsel also relied upon the decision in National Iron & Steel Co. Ltd. Vs. State of West Bengal, reported in AIR 1967 Supreme Court, 1206, in which it was held that "Under Section 25F of the Act, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing, indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice". In that case, the notice dated 15.11.1958 was given to the effect that the addressee's services were terminated with effect from 17.11.1958 and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. It was held that manifestly, Section 25F of the Act had not been complied with under which it was incumbent upon the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. Reliance was placed on behalf of the petitioners on the decision of the Supreme Court in State of Bombay Vs. Hospital Mazdoor Sabha and ors. reported in AIR 1970 S.C 610, in paragraph 6 of which it was held that on a plain reading of Section 25F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. Reliance was also placed on the decision of the Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, reported in (1990) 1 S.C.C 361, in which it was held that initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned

with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. The learned Counsel also relied upon the decision of this Court in Uresh Maneklal Shah and ors. Vs. State of Gujarat, reported in 36 (2) GLR 1530, in which it was held that the petitioners had made out a case for regularisation of their services. It will be seen from the judgement that, in that case the Court held that the work which the petitioners were doing was of a permanent nature and that there was no merit in the submission of the respondents that as the petitioners had not been appointed by following the due procedure, they were not civil servants. The Court in fact, observed that the direction of regularisation should not conflict with the existing Rules of recruitment.

7. The learned Counsel appearing for the respondent State submitted that in view of the amendment, which incorporated sub-clause (bb) in clause (oo) to Section 2 of the Industrial Disputes Act, the position of law had changed and any termination which was in accordance with the stipulation contained in the contract of service was not retrenchment and therefore, there was no question of complying with the provisions of Section 25F of the Act, because admittedly the petitioners were appointed for 29 days and as per the stipulation contained in the contract of their employment, they were to stand relieved on the expiry of the period. All these employees were admittedly liable to be terminated as per the very nature of their employment. They were from time to time appointed for a fixed period for various works and had no right to hold any post. It was also contended that the proper remedy for the petitioners was to approach the Labour Court after raising a dispute.

8. It will not be appropriate for this Court, after a lapse of about 12 years of pendency of these petitions, to shunt off the petitioners to Labour Court or to dismiss their petitions on that ground. Even if they ought to have approached the Labour Court, since the matters are pending, the Court's powers under Article 226 are not affected by existence of an alternative remedy. The petitions are therefore, considered on merits.

9. Sub-clause (bb) which was added with effect from 18.8.1984 in clause (oo) of Section 2 of the said Act reads as under:-

"(bb) - termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or "

There is no dispute about the fact that the petitioners were from time to time, appointed for a fixed period and given breaks. It also appears that they were from time to time posted on different works while working as a work-charge employees. The petitions relate to terminations which have taken place after the coming into force of sub-clause (bb) of clause (oo) of Section 2 of the Act. It is therefore obvious that the earlier authorities on the question of retrenchment and violation of Section 25F for its non-compliance cannot be invoked by the petitioners who were appointed for a specific period and their contract of employment was terminated under a stipulation in that behalf contained therein. Sub-clause (bb) of clause (oo) of Section 2 speaks only of contract of employment being terminated under a stipulation in that behalf or termination of service as a result of non-renewal of contract of employment on its expiry and does not spell out any period of such contract. Therefore, irrespective of the length of the period that may have been stipulated in the contract, if there is a provision under such contract for termination of employment of the persons who were appointed, sub-clause (bb) of clause (oo) of Section 2 would apply and the termination would not amount to retrenchment. Even if under some mistaken belief while terminating the employment as per the stipulation of the contract of the employment, the authority has referred to payment of compensation under Section 25F of the Act, that cannot create any rights in favour of such employees dehors the provisions of sub-clause (bb) of clause (oo) of Section 2 of the Act. If a person whose termination of service does not amount to retrenchment and therefore, is not entitled to retrenchment compensation under Section 25F of the Act, is erroneously offered retrenchment compensation, that would not improve his legal position under sub-clause (bb) of clause (oo) of Section 2 of the Act. The Hon'ble Supreme Court, in the case of Himanshu Kumar Vidyarthi and ors. Vs. State of Bihar, reported in 1997 (4) SCC 391 = 1997 (76) FLR 237, has held that in a case where services of daily wagers who were temporary employees were terminated, their disengagement from services cannot be construed to be a retrenchment under

the Industrial Disputes Act. It was held that since they were only daily-wage employees and had no right to the posts, their disengagement from service was not arbitrary. In Escorts Limited Vs. Presiding Officer and anr., reported in (1997) 11 S.C.C 521, where a temporary appointment was made for a specified period and the terms of appointment enabled the employer to terminate the services at any stage, it was held by the Hon'ble Supreme Court that the termination of services of such workmen did not constitute retrenchment in view of sub-clause (bb) of clause (oo) of Section 2 of the Act. The provision of sub-clause (bb) of clause (oo) of Section 2 was earlier considered in the case of Venugopal Vs. Divisional Manager, LIC, reported in (1994) 2 SCC 323, in which it was held that since the termination of the employee who was appointed on probation for one year, which probation was extended for a further period, before expiry of which his services were terminated in accordance with the terms of the contract, it did not constitute retrenchment.

10. In the present case also, since the services of the petitioners were terminated as per the terms of contract of their employment, there was no question of any retrenchment. It cannot therefore be said that the termination was violative of Section 25F of the said Act, on the ground that they were offered retrenchment compensation on a date after the date of their being relieved under the notice terminating their employment.

11. In Bhanmati Tapubhai Muliya Vs. State of Gujarat, reported in 37(1) GLR 54, a Division Bench of this Court had held that a person appointed only for a limited period has no right to continue in service beyond that period. Reliance was placed on the decision of the Supreme Court in State of Gujarat Vs. P.J. Kampavat, reported in 1991 (1) GLR 848 (SC), in which it was held by the Hon'ble Supreme Court that persons appointed on a specific condition that their services will be purely temporary and liable to be terminated forthwith without any notice, cannot seek any protection. In the present case, there is a clear statutory provision in sub-clause (bb) of Clause (oo) of Section 2 of the said Act, which lays down that the termination of the nature with which we are concerned, being under a stipulation in the context of employment itself, is not a retrenchment. In this view of the matter, no relief can be granted to the petitioners against the impugned orders and the petitions deserve to be rejected. Rule is discharged in each of them with no order as to costs. Interim reliefs stand vacated.

12. It has been stated that after the filing of these petitions, there have been Government Resolutions, particularly a resolution dated 17.10.1988, for giving benefits to daily wagers and work-charge employees. If that is so, then obviously this decision will not come in way of the petitioners being granted any benefits, which may have been intended for such employees. It is stated that some of the benefits are already given to some of the petitioners. If the petitioners have any entitlement under the Government resolutions on the basis of their past services, they can obviously claim such entitlement, but since that is not the subject matter of the present petitions, no directions can be given in that regard.

*/Mohandas